



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Ms. Pamela Underhill, Park Manager  
Appalachian National Scenic Trail  
U.S. Department of Interior  
National Park Service  
Harpers Ferry Center  
P.O. Box 50  
Harpers Ferry, West Virginia 25425

October 14, 2008

Re: Palmerton Zinc Pile Superfund Site, Operable Unit #1, Blue Mountain

Dear Ms. Underhill:

I am writing to provide you with the Outline of Remedial Design Components for Geographical Area 2 ("GA-2") that EPA will be forwarding to the Responding Parties shortly in order to allow them to move forward in drafting the GA-2 Re-vegetation and Monitoring Work Plan. The enclosed Outline of Remedial Design Components reflects EPA's careful consideration of NPS' comments and concerns and should be considered EPA's final determination as to what is required in the Outline for GA-2 of Operable Unit #1 ("OU#1") of the Palmerton Zinc Pile Superfund Site ("Site") under the existing Record of Decision ("ROD"), the 2003 Consent Decree, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP").

As you are no doubt aware, remedial activities at OU #1 of the Site include the re-vegetation of thousands of denuded acres on Blue Mountain which were impacted by historic zinc smelting activities at the Palmerton Zinc facility. These remedial activities are currently being performed pursuant to a Consent Decree between the United States and Horsehead Industries, Inc., Horsehead Resource Development Company, Inc. (collectively "Horsehead"), CBS Operations Inc., and TCI Pacific Communications, Inc. (collectively "CBS") entered by the United States District Court for the Middle District of Pennsylvania in November 2003. Under the terms of the 2003 Consent Decree, Horsehead and CBS are required to implement the ROD for OU #1. To date, approximately 900 acres of land owned by Horsehead were successfully re-vegetated from 1988 through 1996, and over 600 acres of land owned by the Lehigh Gap Nature Center and other private parties were successfully re-vegetated from 2004 through 2007, among other things. In addition, Pennsylvania State Game Commission lands adjacent to NPS-managed lands with slopes greater than 25% were aerially applied this Spring and are showing indications of germination of target species. Finally, Aerial Application Test Plot applications conducted on NPS-managed lands in Spring 2007 have shown significant growth.



Although representatives of NPS have estimated that an additional 800 acres of NPS-managed lands lie within the boundaries of OU #1, NPS has threatened to refuse to grant access to CBS so that remedial activities can proceed there unless EPA accepts the language submitted by NPS regarding plan approval, among other things. EPA understands NPS' unique position as long term steward of public lands entrusted to them. However, allowing large portions of Blue Mountain to continue to remain denuded indefinitely because NPS is attempting to obtain an enhanced remedy on NPS-managed lands does not seem to be an appropriate approach to that stewardship.

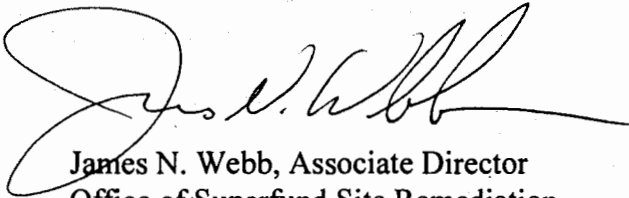
Speedy resolution of the thorny issues relating to plan approval authority, EPA remedial action objectives versus NPS remedial action goals, and inclusion of requirements for long term measures to protect the vegetation that is geared toward requiring an engineered remedy at the Rockslide area, is essential. EPA's position on these issues is reflected in the enclosed outline. EPA is willing to meet with appropriate NPS representatives empowered to make final decisions on these issues, as well as with DOJ, in an attempt to resolve our differences of opinion. Otherwise, EPA feels that it may be appropriate for NPS to utilize its own CERCLA authorities as the lead agency for the property that it manages in GA-2. Several plans, including the Road Construction Work Plan as well as the Weed Management Plan for GA-2, are pending resolution of the RD Outline. However, unless we can reach agreement on the Outline of Remedial Design Components, these plans can not be implemented.

EPA feels that it is important to allow the remedial activities required by the OU#1 ROD and the 2003 Consent Decree to proceed. We have estimated that the cost to implement the 1987 ROD on NPS-managed lands as outlined is well over \$5 Million and feel that NPS' failure to take advantage of the benefits granted to it by the 2003 Consent Decree is a missed opportunity. EPA does not plan to re-negotiate the 2003 Consent Decree, to issue a new ROD, or to change the 1987 ROD by either amendment or ESD because, among other things, we would not gain any greater protection of human health and the environment by doing so.

EPA's Project Manager and Senior Assistant Regional Counsel have explained EPA's position to NPS representatives on multiple occasions and they have committed to make every effort to see that NPS' concerns are addressed, to the extent practical, during the remedial design stage of OU #1 remedial activities. EPA has encouraged NPS to participate fully during this phase and will continue to do so. This commitment has resulted in the agreement by CBS to install resource islands which will be more intensively managed to ensure that the performance standards are attained, among other concessions. However, NPS must understand that there are limits to what EPA can lawfully require at OU #1 under the existing ROD, the 2003 Consent Decree, CERCLA, and the NCP. EPA anticipates moving forward with the GA-2 Re-vegetation and Monitoring Work Plan for the remaining denuded acres in Spring 2009 and we hope that the lands managed by NPS will be included in that effort.

Please feel free to contact me directly to discuss this letter at (215) 814-3169. If you would like to meet to discuss this matter, please have NPS's Project Manager, Greg Nottingham contact Charlie Root, EPA's Project Manager to arrange a mutually acceptable date and time for such a meeting here in EPA Region III.

Sincerely,

A handwritten signature in dark ink, appearing to read "James N. Webb", written over a horizontal line.

James N. Webb, Associate Director  
Office of Superfund Site Remediation

cc: C. Root (EPA RPM)  
C. Nadolski (EPA ORC)  
G. Nottingham (NPS PM)  
S. Mulligan (NPS Counsel)  
P. Ludzia (EPA Branch Chief)